IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 545 OF 2005

Arvind Manohar Pathrudkar ... Appellant

V/s

1. Shaikh dilawar Rasul & ors. ... Respondents

Mr. Surel S. Shah for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 4TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Solapur, dated 28.4.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr.Divn., Solapur, dated 21.9.1999, dismissing the plaintiffs' suit for mandatory injunction as well as perpetual injunction.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs came with the case that the

defendants had encroached upon his land as well as the land of the State Government and, therefore, the suit for perpetual as well as mandatory injunction came to be filed. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs have failed to prove that the defendants had trespassed on plaintiffs' land and made construction of respective kiosks over the suit property and as such the suit came to be dismissed.

4. The appeal was carried to the District Court, Solapur. The learned Addl. District Judge, after hearing both parties came to the conclusion that the findings recorded by the Trial Court were legal and proper and hence dismissed the appeal. Hence the present appeal.

5. At the outset, it must be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the Court Commissioner's report on record discloses that the defendants had made encroachment upon the Government land and it was revealed that the kiosks were put in front of the plaintiff's property. However, as both the Courts have noted that there is no encroachment on the

land belonging to the plaintiffs and, as such, the suit in its present form was not maintainable. It was submitted that the way of approach to the plaintiffs' property is also blocked due to the construction made by the defendants. However, it is conceded that there was no specific prayer in that regard nor any specific issue was raised at the trial stage as well as at the first appellate Court stage. In the circumstances, the question whether approach way of the plaintiffs' is affected or not cannot be taken into account at this stage and, therefore, I hold that the findings recorded by both the Courts below are legal and proper which are based on the available evidence on record.

6. In the result, the appeal has no merits and stands dismissed with no order as to costs. Consequently, Civil Application No.980 of 2005 also stands dismissed.

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